IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.11146 of 2004

Date of Decision: 21.9.2006

Ex-Constable Harcharan Singh No.5-C/785 .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.KG Chaudhary, Advocate
for the petitioner.

Mr.Ashok Aggarwal, Additional AG Punjab.

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J.S.KHEHAR, J.(Oral)

1. The petitioner was enrolled as a Constable in the Police Department of the State Government on 30.4.1985. In the year 1998, he was posted with the 5th Commando Battalion. During his aforesaid posting, he availed of casual leave for a period of two days w.e.f. 28.3.1998. On the basis of the aforesaid leave sought by him, he was required to report back on 31.3.1998. Rather than doing so, the petitioner resumed service on 23.9.1998. His absence from duty from 31.3.1998 to 23.9.1998 i.e. for a total period of 176 days and 9 hours became the subject matter of a departmental enquiry conducted against him. On the culmination thereof, the Commandant, 5th Commando Battalion dismissed the petitioner from

service on account of his aforesaid wilful absence from duty. Dissatisfied with the order dated 26.3.1999, the petitioner preferred an appeal. The appeal filed by the petitioner was dismissed by the Deputy Inspector General of Police, Commando (Administration) on 19.1.2000. At this stage, the petitioner preferred a revision petition which also was dismissed by the Inspector General of Police, Commando, Punjab vide his order dated 11.9.2000.

2. Through the instant writ petition, the petitioner has impugned the orders dated 26.3.1999, 19.1.2000 and 11.9.2000.

3. During the course of hearing, learned counsel for the petitioner pointedly invited our attention to the operative part of the order dated 26.3.1999 passed by the Punishing Authority. Relevant part of the order relied upon is being extracted hereunder:

> "I have carefully gone through the file relating to inquiry proceedings, complaint, defence witnesses and the report of the Inquiry Officer and also the past record of service (which is not satisfactory). The defaulter Constable Harcharan Singh No.5-C/785 remained absent of his own for a period of 176 days and 9 hours which is clear violation of discipline in police force. After taking into consideration the above said facts, I award the punishment of dismissal to constable Harcharan Singh No.5-C/785 as proposed in the show cause notice w.e.f. 26.3.99 and I also direct that the period of absence from duty will be treated as non-duty period."

4. Our pointed attention was also drawn to the fact, that the Punishing Authority has taken into consideration the past record of the

petitioner, while arriving at the quantum of punishment to be inflicted on the petitioner. It is this aspect of the consideration at the hands of the Punishing Authority which is assailed by the petitioner by relying on Rule 16.24 (vii) of the Punjab Police Rules, 1934 (hereinafter to be referred as 1934 Rules). The rule relied upon by the learned counsel for the petitioner is being extracted hereunder:

> "16.24 (vii). The enquiring officer shall be proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into consideration the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be taken into account by the officer before passing orders in the case."

5. In order to substantiate his contention, namely, that the past record of the petitioner could not be taken into consideration while inflicting the punishment imposed upon him, unless details thereof or a gist of the details thereof had been communicated to him, reliance has been placed on a judgment rendered by a learned Single Bench of this Court in **State of Haryana Versus Mohinder Partap**, 1997(1) Recent Services Judgments 727 wherefrom learned counsel for the petitioner invited our attention to the following observations:

> "A bare perusal of the provisions of the aforesaid Rule would show that a copy of the gist of previous punishment, a list has to be furnished to the delinquent official. In the present case, a perusal of the show cause notice dated 30.6.1978 would show that gist of the previous punishment was not supplied to the plaintiff. In the show cause notice it is simply mentioned by the Punishing Authority that the Enquiry Officer appointed to enquire into certain charges against the delinquent official has submitted his findings and on consideration of the same, the Punishing Authority has made up his mind provisionally for the imposition of penalty of dismissal. In this context, the delinquent official was given the opportunity to show cause why the proposed action should not be taken against him and an option was given to the official to submit his representation in writing within 15 days failing which it would be presumed that he had nothing to say in the matter. Above show cause notice thus is not in conformity with the provisions of Rule 16.24 but the Punishing Authority did take into consideration the gist of the previous punishment which were awarded to the plaintiff at the time of the passing of the impugned order dated 30.6.1978."

6. Learned counsel for the petitioner has also placed reliance on another judgment rendered by this Court in **Mahipat Versus The State of Haryana and others**, 1994(3) Recent Services Judgments 132 wherein another learned Single Bench of this Court observed as under:

> "It is discernible from reading of the impugned orders that

while awarding the punishment of dismissal the authority did take into consideration that the petitioner was a habitual absentee from duty and was earlier punished six times according to the record. It is clear beyond argument that the Punishing Authority did take into consideration the past record of the petitioner. There is nothing on the record nor it was pointed out during the course of argument by the counsel for the either party that the petitioner was ever made aware of the fact that while awarding the punishment of dismissal, his previous record would be taken into consideration. No explanation or no opportunity to explain his previous conduct resulting into the alleged six times punishment for absence from duty was granted. It is violation of principles of natural justice. It is envisaged by Rule 16.24 (vii) that in the eventuality of the Punishing Authority, while awarding the punishment, proposes to be taken into consideration the previous record of the delinquent police officer, he shall provide a reasonable opportunity to the defaulter to defend himself. The rule in its mandatory form is in conformity with the principles of natural justice. Herein, as observed above as well as obvious from the record, the petitioner was never made aware of the consideration of the previous record while awarding the punishment. The said action of the Punishing Authority is violative of the mandatory provisions of the Rule. No opportunity was granted to the petitioner to present or explain his previous conduct."

7. Cumulatively on the basis of the provisions of 16.24 (vii) of 1934 Rules and the judgments rendered by the learned Single Judges of this Court in **State of Haryana Versus Mahinder Partap** (supra) and in **Mahipat** Versus **The State of Haryana and others** (supra), learned counsel for the petitioner states, that the statutory rules have been violated in depriving the petitioner of his rights to repudiate the reliance of various punishments inflicted on him while imposing the punishment on the petitioner for his presently alleged delinquency. It is also the pointed assertion of the learned counsel for the petitioner, that in the two cases relied upon by him, the competent authority had taken into consideration punishments inflicted upon the employees involved in the said cases, without informing them the details thereof and/or without having brought to their notice the gist thereof, in the show cause notices issued to them.

8. We have considered the aforesaid contention of the learned counsel for the petitioner in conjunction with the submissions made by the learned counsel for the respondents. According to the learned counsel for the respondents, the factual position is, that the punishing authority and the other authorities which adjudicated on the matter had taken into consideration the past service record of the petitioner, wherein, as many as 23 punishments had been inflicted upon him from time to time. Details thereof were disclosed in paragraph 6 in the joint written statement filed on behalf of respondents No.1 to 4. The details disclosed in para 6 of the written statement are being extracted hereunder:

> "This absence of the petitioner is not his first absence, while the petitioner has remained absent from duty on many occasions. The service record of the petitioner is respectfully

submitted as under:

Sr.No.	Absence Period		Punishments
1.	1.08.90 to 5.9.90	36 days	36 days leave without pay
2.	5.10.91 to 6.10.91	2 days	2 days L.W.P.+ Censure
3.	16.7.94 to 20.7.94	4 days	4 days Non duty period
4.	7.12.93 to 8.12.93	1 day	1 day N.D.P. + Censure
5.	4.12.94 to 6.12.94	2 days	2 days N.D.P.
6.	24.7.96 to 6.8.96	13 days	13 days N.D.P.
7.	9.10.96 to 8.11.96	30 days	30 days N.D.P.
8.	3.11.96 to 5.11.96	2 days	2 days N.D.P.
9.	8.6.96 to 20.6.96	12 days	12 days N.D.P.+Censure
10.	31.12.94 to 2.5.95	124 days	124 days N.D.P.+2 Y.S.F.
11.	3.4.96 to 10.5.96	38 days	38 days N.D.P.
12.	13.5.97 to 17.6.97	35 days	35 days N.D.P.
13.	9.7.97 to 23.7.97	15 days	15 days N.D.P.
14.	26.7.97 to 31.7.97	5 days	5 days N.D.P.
15.	10.8.97 to 18.8.97	8 days	8 days N.D.P.
16.	16.1.98 to 20.1.98	4 days	4 days N.D.P.
17.	25.9.97 to 8.10.97	13 days	13 days N.D.P.
18.	15.11.97 to 29.12.97	45 days	45 days N.D.P.
19.	3.3.98 to 8.3.98	5 days	5 days N.D.P.
20.	36th Bn. PAP order No.2601-04/Steno, Dt.4.2.92		1 Y.S.f.
21.	Petitioner found and his 1 Y.S.F. on P/Basis vide order No.16357-60/St.,dated 20.9.93.		
22.	39 days absence and 1 Y.S.F. on P/basis.		
23.	5.9.96 to 10.4.97	126 days	3 Y.S.F.”

9. It is apparent from the acknowledged factual position in para 6 of the written statement that while inflicting the punishment of dismissal from service on the petitioner, the concerned authorities had indeed taken into consideration the various punishments inflicted on him from time to time. But what needs to be emphasized is, that the various authorities involved in adjudicating upon the controversy, eventually leading to the dismissal of the petitioner, did not take into consideration any annual confidential report or remarks recorded in any such report. A careful perusal of Rule 16.24 (vii) of 1934 Rules reveals, that the mandate of the said Rule, is limited to the disclosure of the details of the adverse entries of an employee, or the gist thereof. According to the learned counsel for the respondents, the punishments inflicted upon the petitioner under the relevant rules, are separate and distinct from the adverse entries of past service record or the gist thereof. According to the learned counsel for the respondents, this rule requires that adverse entries or the gist thereof, should be brought to the notice of the employee before determining the quantum of punishment.

10. The question to be adjudicated upon in determining the present controversy is, whether the words expressed in Rule 16.24(vii) of 1934 Rules “to take into consideration the adverse entries on the previous record of the accused Police Officer” would include the punishments inflicted upon him during his service career.

11. Having considered the matter at some length, we are satisfied that the rule framing authority, incorporated in the rules, the requirement to disclose only adverse entries recorded in the previous record or the gist thereof to an employee, and not the punishments inflicted upon him. The

reason for not requiring him to be communicated the details of the punishment inflicted upon him is apparent and obvious, namely, irrespective of the punishment inflicted upon him, which may be major or minor, a reasonable opportunity is always afforded to the employee in consonance with the rules of natural justice, before any punishment is imposed, and as such, any employee is already aware of the details of the reasons which had weighed with the authorities when such punishments had been inflicted upon him, as also, the details of punishments inflicted on him. And therefore, it would be really unnecessary to bring to his notice what he is already aware of. That may not be so in case of entries recorded in his service book. It is, therefore, apparent that the requirement under Rule 16.24(vii) of 1934 Rules mandates, only the supply of adverse entries on the previous recorded Annual Confidential Reports or gist thereof, to the employee, if the same are to be relied on while imposing a punishment on him.

12. In view of the above, we are satisfied that it was not essential for the authorities, to disclose the details of the adverse entries of his previous record, before relying upon them in determining the punishment to be imposed upon him. Additionally, we are satisfied that the decisions relied upon by the learned counsel for the petitioner wherein learned Single Judges of this Court in two cases interpreted Rule 16.24 of 1934 Rules, to mean that it was necessary to furnish details of punishment imposed upon a delinquent official, before inflicting a punishment upon him, if the punishments imposed earlier were to be relied upon while deciding the quantum of punishment, did not lay the correct law. The same are accordingly hereby overruled.

13. In view of the conclusions recorded above, we find no merit in the present writ petition, and the same is accordingly dismissed.

(J. S. KHEHAR)
JUDGE

(S. D. ANAND)
JUDGE

September 21, 2006
SRM